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CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

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ZYXEL COMMUNICATIONS UK LIMITED
and ZYXEL COMMUNICATIONS A/S

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re APPLICATION OF ZYXEL
COMMUNICATIONS UK LIMITED and
ZYXEL COMMUNICATIONS A/S FOR AN
ORDER PURSUANT TO 28 U.S.C. § 1782
GRANTING LEAVE TO OBTAIN
DISCOVERY FROM BROADCOM INC.
and BROADCOM CORP. FOR USE IN
FOREIGN PROCEEDINGS

CV No. 19 80 175 MISC

DECLARATION OF MARK CHARLES
MARFÉ IN SUPPORT OF EX PARTE
APPLICATION OF ZYXEL
COMMUNICATIONS UK LIMITED and
ZYXEL COMMUNICATIONS A/S FOR
AN ORDER PURSUANT TO 28 U.S.C. §
1782 GRANTING LEAVE TO OBTAIN
DISCOVERY FROM BROADCOM INC.
and BROADCOM CORP. FOR USE IN
FOREIGN PROCEEDINGS

SVK

I, Mark Charles Marfé, declare as follows:

1. I am an English-qualified lawyer and a senior associate at Pinsent Masons LLP in London, England, and I act for the Applicants ZyXEL Communications UK Limited and ZyXEL Communications A/S, (together, "ZyXEL") in the English proceeding discussed in this declaration. I work closely with Deborah Bould, the partner with overall responsibility for this

DECLARATION OF MARK CHARLES MARFÉ

BY FAX

1 matter. I have been licensed as a solicitor since 2006 and have practiced in the field of
2 intellectual property in my entire career. I specialize in patent litigation and other contentious
3 intellectual property disputes, which frequently involve a cross-border aspect. I therefore have
4 personal knowledge of the matters set forth in this declaration, except those made upon
5 information and belief.
6

7 2. I make this declaration in support of ZyXEL's *Ex Parte* Application for an Order
8 Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery from Broadcom Inc. and
9 Broadcom Corp (collectively, "Broadcom") for use in Foreign Proceedings.
10

11 English Proceedings

12 3. ZyXEL sells and distributes networking devices used to connect people to the
13 internet, including Digital Subscriber Line ("DSL") products. On July 14, 2017, TQ Delta LLC
14 ("TQ Delta"), a patent holding company, brought a patent infringement action in the High Court
15 of Justice of England and Wales against ZyXEL, alleging infringement of EP (UK) 1 792 430 B9
16 ("the '430 Patent") and EP (UK) 1 453 268 B1 ("the '268 Patent").
17

18 4. The '430 and '268 Patents involve aspects of DSL technology, and were said to
19 relate specifically to the International Telecommunication Union ("ITU-T") Recommendations
20 for ADSL2 (G.992.3), ADSL2+ (G992.5) and VDSL2 (G993.2). These standards govern how
21 data is transmitted over copper telephone wires to enable the provision of broadband services.
22

23 5. TQ Delta alleged that the ITU-T Recommendations for the DSL technologies
24 ADSL2, ADSL2+ and VDSL2 could not be practiced without infringement of the '430 and '268
25 Patents, which, it claimed, are essential to these ITU-T Recommendations. The products that use
26 the '430 and '268 Patents are Customer Premises Equipment ("CPE"), e.g., DSL routers in end
27
28

1 users' homes, and Central Office ("CO") products, e.g., digital subscriber line access
2 multiplexers (DSLAMs) and line cards.

3
4 6. The questions presented in the case involved technical issues of validity and
5 infringement and whether the '430 and '268 Patents were in fact essential to the ITU-T
6 Recommendations, as well as non-technical issues relating to the licensing of the TQ Delta
7 patent portfolio.

8
9 7. On April 26, 2018, TQ Delta provided draft license terms to ZyXEL and sought
10 its agreement to the terms (the "April 2018 Proposal"). The draft license listed certain patent
11 families that TQ Delta proposed to license to ZyXEL together with any other patents a court of
12 competent jurisdiction held to be essential to a "Licensed Standard." TQ Delta alleges that the
13 April 2018 Proposal is a RAND offer.

14
15 8. The trial of the technical issues took place in January 2019. The English court
16 held that the '430 Patent was invalid, but it found that the '268 Patent was valid and essential to
17 the ITU-T Recommendations, and that ZyXEL infringed it. The court enjoined further
18 infringement of the '268 Patent. The '268 Patent expired on June 25, 2019. Non-technical
19 issues related to the licensing of the TQ Delta patent portfolio will be adjudicated at the trial
20 scheduled to take place in England from September 13–27, 2019 (the "RAND trial"). Issues of
21 patent essentiality to the ITU-T Recommendations will also be addressed at the RAND trial.

22
23 9. On March 14, 2019, TQ Delta brought another infringement claim against ZyXEL
24 concerning two other patents in its portfolio, EP (UK) 2,270,996 ("the '996 Patent"), and EP
25 (UK) 1,433,277 ("the '277 Patent"). TQ Delta argues that the '996 Patent is essential to the
26 ADSL2/2+/VDSL2 standards, and the '277 Patent is essential to the G.bond ATM (G.998.1)
27
28

1 standard. There is currently no technical trial scheduled although, the non-technical issues in the
2 new proceedings will be determined at the RAND trial in September 2019.

3
4 Discovery Sought

5 10. Broadcom is a manufacturer of chipsets used in ZyXEL's products and almost
6 certainly has information in its possession, custody, or control that is relevant to TQ Delta LLC's
7 claims of patent infringement against it.

8
9 11. Upon information and belief, Broadcom has its principal place of business in San
10 Jose, California, and its corporate headquarters is located at 1320 Ridder Park Drive, San Jose,
11 California 95131. See Broadcom Inc., Form 8-K (June 26, 2019) (attached as Ex. A).

12 12. Broadcom has already provided ZyXEL with a brief confidential witness
13 statement that shows that Broadcom has a license to a portfolio of DSL patents and patent
14 applications originally owned by Panasonic System Networks Co., Ltd ("Panasonic") under the
15 Patent Cross-License Agreement between Broadcom and Panasonic dated December 19, 2013
16 (the "Agreement").

17
18 13. The terms of the Agreement are, in my view, highly likely to be relevant to
19 licensing issues that are to be determined at the RAND trial. However, due to confidentiality
20 obligations within the Agreement, Broadcom has informed me that it cannot disclose the
21 Agreement itself without Panasonic's consent or under certain circumstances involving a court
22 order, discovery request, or subpoena.

23
24 14. Accordingly, ZyXEL seeks leave to serve a subpoena on Broadcom for the
25 Agreement, so that it may use the contents of the Agreement in the UK proceedings.

26
27 15. ZyXEL also is seeking deposition testimony from a Broadcom witness
28 (presumably an engineer), which will allow ZyXEL to prove that certain functionality said to

1 infringe one of TQ Delta's patent families was not implemented in the Broadcom chips ZyXEL
2 used in its DSL products.

3
4 16. The functionality in question relates to a messaging function set out in the ITU-T
5 Recommendations; ZyXEL seeks a deposition from a Broadcom engineer to confirm whether the
6 repeated messaging feature is permanently disabled in the Broadcom Digital Signal Processor
7 (DSP) chips sold and incorporated in ZyXEL's products from July 2011–2019.
8

9
10
11
12 I declare under penalty of perjury under the laws of the United States that the foregoing is
13 true and correct.

14
15 Executed on July 3, 2019 in London, England.

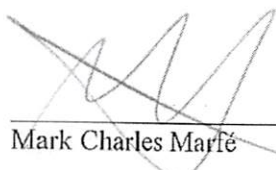
16
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18 Mark Charles Marfé
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Exhibit A

8-K

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): June 26, 2019

BROADCOM INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38449
(Commission
File Number)

35-2617337
(IRS Employer
Identification No.)

1320 Ridder Park Drive, San Jose, California
(Address of principal executive offices)

95131
(Zip Code)

(408) 433-8000
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, \$0.001 par value	AVGO	The Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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Item 7.01. Regulation FD Disclosure.

On June 26, 2019, following months of discussion with Broadcom Inc. ("Broadcom"), the European Commission ("Commission") announced that it has opened proceedings against Broadcom to investigate certain contracting practices in the sale of set-top box and broadband modem products. As a part of this ongoing investigation, the Commission has informed Broadcom of its objections to provisions in specific contracts with a limited number of customers that the Commission characterizes as exclusivity-inducing, and of the Commission's intention to adopt interim measures that would preclude Broadcom from enforcing these provisions pending the final outcome of the investigation. The interim measures, if adopted, will not preclude the continued sale by Broadcom of any products. Broadcom's contracts with these customers would remain in force, other than the provisions at issue, and it intends to continue to support these customers going forward. Accordingly, Broadcom believes that this action will not have a material impact on its set-top box or broadband modem businesses.

Broadcom believes it complies with European competition rules and that the Commission's concerns are without merit. Broadcom will respond to the Commission regarding its objections and proposed interim measures. Broadcom will continue to cooperate with the Commission and looks forward to discussing procedural and substantive matters with the Commission over the coming weeks and months.

This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements include, but are not limited to, Broadcom's intentions and beliefs with regard to the Commission proceeding and its effects on Broadcom's business. These statements are based on the current expectations and beliefs of Broadcom's management, and are subject to uncertainty and changes in circumstances. Actual events or results may differ materially from those statements due to changes in economic, business, competitive, technological, strategic or other regulatory factors, as well as factors affecting the operation of the Broadcom's business, many of which are outside Broadcom's and its management's control. For information about the factors that could cause such differences, please refer to Broadcom's Quarterly Report on Form 10-Q for the period ended May 5, 2019, filed with the Securities and Exchange Commission, including the information set forth under the caption "Risk Factors."

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

BROADCOM INC.

Date: June 26, 2019

By: /s/ Mark D. Brazeal

Name: Mark D. Brazeal

Title: Chief Legal Officer